

§ 4.338 Remedial and affirmative action by recipients.

(a) Where NRC finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that NRC may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, NRC may require both recipients to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(c) If a recipient, operating a program that serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children, the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 4.339 Alternate funds disbursement procedure.

(a) When NRC withholds funds from a recipient under these regulations, the Commission, or designee, may disburse the withheld funds directly to an alternate recipient, any public or nonprofit private organization or agency, or State or political subdivision of the State.

(b) Any alternative recipient will be required to demonstrate—

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 4.340 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if—

(1) 180 days have elapsed since the complainant filed the complaint and NRC has made no finding with regard to the complaint; or

(2) NRC issues any finding in favor of the recipient.

(b) If NRC fails to make a finding within 180 days or issues a finding in favor of the recipient, NRC will—

(1) Promptly advise the complainant; and

(2) Advise the complainant of his or her right to bring a civil action under section 305(e) of the Act of injunctive relief that will effect the purposes of the Act; and

(3) Inform the complainant that—

(i) The complainant may bring a civil action only in a United States District Court for the district in which the recipient is found or transacts business;

(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action, the complainant shall give 30 days notice by registered mail to the Commission, the Secretary of the Department of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) The notice must state the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) The complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of pending action in any court of the United States.

§ 4.341 Reports.

The NRC shall submit to the Secretary of Health and Human Services, not later than December 31 of each year, a report which—

(a) Describes in detail the steps taken during the preceding fiscal year to carry out the Act; and

(b) Contains data on the frequency, type, and resolution of complaints and on any compliance reviews, sufficient to permit analysis of the agency's progress in reducing age discrimination in programs receiving Federal financial assistance from NRC; and

(c) Contains data directly relevant to the extent of any pattern or practice of age discrimination which NRC has identified in any programs receiving